

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES TIMMIE BOONE,

Defendant-Appellant.

UNPUBLISHED

October 8, 1996

No. 186397

LC No. 94-002227-FH

Before: J.H. Gillis, P.J., and G.S. Allen and J.B. Sullivan, JJ.*

MEMORANDUM.

Defendant pleaded guilty of delivery of less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), and was sentenced to five to twenty years' imprisonment. He appeals as of right. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(A).

Defendant has failed to establish that his trial counsel was ineffective in negotiating a plea agreement. *People v Pickens*, 446 Mich 298, 338; 521 NW2d 797 (1994). Defense counsel was not ineffective merely because he did not request that the trial court make a preliminary evaluation of defendant's sentence pursuant to *People v Cobbs*, 443 Mich 276, 283; 505 NW2d 208 (1993). A sentencing court is not required to provide a preliminary evaluation to a defendant on its sentencing decision. *Id.*, 286. Nothing in the record supports finding that the court in this case would have agreed to provide a preliminary evaluation even if defense counsel had requested one. Moreover, there is no evidence that defendant would have entered a plea pursuant to *Cobbs*. Because defendant's counsel did in fact reach a favorable plea agreement with the prosecution, defendant has not established that his counsel's performance fell below an objective standard of reasonableness or that he was prejudiced by his counsel's performance. *Pickens*, *supra*, 338.

*Former Court of Appeals judges, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-3.

Alternatively, defendant requests that this matter be remanded for an evidentiary hearing on his claim of ineffective assistance of counsel. *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973). Defendant has not made an offer of proof to show that there is a question of fact to justify remanding this matter back to the trial court for an evidentiary hearing. *People v Simmons*, 140 Mich App 681, 685-686; 364 NW2d 783 (1985).

Defendant's sentence is within the recommended range of the sentencing guidelines and does not violate the principle of proportionality. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990); *People v Dukes*, 189 Mich App 262, 266; 471 NW2d 651 (1991). In light of defendant's extensive record of misdemeanor convictions, he has not overcome the presumptive proportionality of the sentence. *People v Mooney*, 216 Mich App 367, 379; 549 NW2d 65 (1996).

Affirmed.

/s/ John H. Gillis

/s/ Glenn S. Allen, Jr.

/s/ Joseph B. Sullivan